



UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

KLEANTHIS N. ANDREADAKIS,

Plaintiff,

v.

CENTERS FOR DISEASE
CONTROL & PREVENTION *et al.*,

Defendants.

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Case No. 3:22-cv-52-DJN

District Judge David Novak

**PLAINTIFF'S RESPONSE TO APRIL 22 COURT ORDER CONCERNING
DECISION IN HEALTH FREEDOM DEFENSE FUND v. BIDEN**

COMES NOW plaintiff, *pro se*, and responds to the Court's April 22, 2022, Order stating "Given that the United States District Court for the Middle District of Florida has issued the Vacatur Order vacating the Mask Order, the parties shall brief the effect of the Vacatur Order on the claims raised here by Plaintiff." Doc. 87 at 14. The Court directed me to "explain[] the effect of the Vacatur Order on [my] claims, including an identification of which specific claims, by number, that [I] intend[] to continue to press and which claims that [I] intend[] to abandon as moot." *Id.* at 14-15.

My response is quite simple: I will continue to press all of my causes of action and will not abandon any claims. The decision by Judge Mizelle in *Health Freedom Defense Fund v. Biden*, No. 8:21-cv-1693 (M.D. Fla. April 18, 2022), does not moot any of my claims against the Federal Defendants with respect to the Federal Transportation Mask Mandate ("FTMM"), which has not been repealed by the Centers for Disease Control & Prevention ("CDC") nor its parent agency, the

Department of Health & Human Services (“HHS”). The Federal Defendants filed an appeal of Judge Mizelle’s *vacatur* of the FTMM on April 20. No. 22-11287 (11th Cir.).

Just nine days later, Judge Byron, also in the U.S. District Court for the Middle District of Florida, issued a judgment upholding the legality of the FTMM and the International Traveler Testing Requirement (“ITTR”) that I challenge in this litigation, expressing a polar opposite view of Judge Mizelle regarding the statutory authority of CDC and HHS, whether they had “good cause” to skip notice and comment, and whether the mask mandate is arbitrary and capricious. *Wall v. CDC*, No. 6:21-cv-975 (M.D. Fla. April 29, 2022). That’s the first judgment in the nation concerning the legality of the ITTR. The plaintiff is *Wall* immediately appealed Judge Byron’s conflicting decision to the 11th Circuit (case number not yet assigned), setting up a battle there over whether Judge Mizelle’s or Judge Byron’s judgment is the correct application of the law. But that doesn’t stop this Court from considering my claims, especially given that it sits in a different circuit.

As Judge Byron noted in his decision in *Wall*:

“On April 18, 2022, a court in this district vacated the FTMM. ... However, a ‘district court cannot be said to be bound by a decision of one of its brother or sister judges.’ *Fishman & Tobin, Inc. v. Tropical Shipping & Const. Co., Ltd.*, 240 F.3d 956, 965 (11th Cir. 2001). Further, ‘[a] case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.’ *Knox v. Serv. Emps. Int’l Union, Local 1000*, 567 U.S. 298, 307 (2012) (internal quotations omitted). That is, a case does not necessarily become moot simply because intervening events may make it impossible for a federal court to issue the exact form of relief that Plaintiff requests. *Church of Scientology of Cal. v United States*, 506 U.S. 9, 13 (1992) (Stevens, J.). In the [] Amended Complaint, Plaintiff requests that the Court vacate the FTMM and enjoin the CDC from any further rules ‘requiring any person wear a face mask.’ (Doc. 188, p. 87). Therefore, ‘[t]he availability of this possible remedy is sufficient to prevent this case from being moot.’ *Id.*”

The Court respectfully got it wrong when it found that “Even if the Vacatur Order is stayed or reversed, the Mask Order currently expires on May 3, 2022, undercutting any claim to ongoing

irreparable harm.” Doc. 87 at 13. The Court confused CDC’s FTMM Order with the Health Directives and Emergency Amendment issued by the Transportation Security Administration (“TSA”) to enforce it. CDC’s Order has no expiration date:

“This Order shall enter into effect on February 1, 2021, at 11:59 p.m. and will remain in effect unless modified or rescinded based on specific public health or other considerations, or until the Secretary of Health and Human Services rescinds the determination under section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists.” 86 Fed. Reg. 8,030.

What the Court meant to cite is that the sixth edition of TSA’s Health Directives and Emergency Amendment enforcing CDC’s Mask Order were set to expire May 3. But given they had been extended five times previously from their original May 11, 2021, end date, it would be foolish for the Court to believe that the government has no intention of seeking to extend them a sixth time if it can reverse the Middle District of Florida’s decision vacating the FTMM worldwide.

This Court is not required to abide by the judgment of any other district court, including those in the *Health Freedom Defense Fund* and *Wall* cases. “A district court is not bound by another district court's decision, nor by the opinion of another judge...” *Fox v. Acadia State Bank*, 937 F.2d 1566 (11th Cir. 1991). Therefore none of my claims are moot.

In fact, the government has made it clear it desperately wants to continue to muzzle all travelers nationwide (and on planes and ships bound for the United States, even though they are far outside U.S. jurisdiction). “It is CDC’s continuing assessment that at this time an order requiring masking in the indoor transportation corridor remains necessary for the public health. CDC will continue to monitor public health conditions to determine whether such an order remains necessary. CDC believes this is a lawful order, well within CDC’s legal authority to protect public health.” CDC Statement of April 20, 2022.¹

¹ <https://www.cdc.gov/media/releases/2022/s0420-masks-public-transportation.html>

When TSA extended its Health Directives and Emergency Amendment from April 18 to May 3, it made clear that by no means would this likely be the final extension, nor did it announce May 3 as the definite date the directives would terminate:

“At CDC's recommendation, TSA will extend the [Health] Directives and Emergency Amendment requiring mask use on public transportation and transportation hubs for 15 days through May 3, 2022. CDC continues to monitor the spread of the Omicron COVID-19 variant, especially the BA.2 subvariant that now makes up more than 85% of U.S. cases. Since early April 2022, there have been increases in the 7-day moving average of COVID-19 cases in the United States. During the 15-day extension period, CDC will assess the potential impact the recent rise of COVID-19 cases has on severe disease, including hospitalizations, deaths, and healthcare system capacity.” TSA Statement of April 13, 2022.²

In response to the ruling in *Health Freedom Defense Fund*, TSA issued a statement April 18 noting it would temporarily voluntarily stop enforcing the FTMM but “CDC continues to recommend that people wear masks in indoor public transportation settings at this time.” TSA Statement of April 18, 2022.³ This leads to a reasonable assumption that since the CDC Mask Order has no expiration date and TSA has claimed authority to require masks as part of its statutory mission to ensure transportation “security,” the Biden Administration could order TSA to reimpose its mask mandate at any time regardless of what transpires with the appeals in *Health Freedom Defense Fund* and *Wall* in the 11th Circuit.

Thumbing its nose at the Judicial Branch and again repeating its false claims,

“CDC recommends that everyone aged 2 and older – including passengers and workers – properly wear a well-fitting mask or respirator over the nose and mouth in indoor areas of public transportation (such as airplanes, trains, etc.) and transportation hubs (such as airports, stations, etc.). When people properly wear a well-fitting mask or respirator, they protect themselves and those around them, and help keep travel and public transportation safer for everyone.” CDC Statement of May 3, 2022.⁴

² <https://www.tsa.gov/news/press/statements/2022/04/13/tsa-extends-face-mask-requirement-through-may-3-2022>

³ <https://www.tsa.gov/news/press/statements/2022/04/18/statement-regarding-face-mask-use-public-transportation>

⁴ <https://www.cdc.gov/media/releases/2022/s0503-covid-19-travel.html>

“Additionally, it is important for all of us to protect not only ourselves, but also to be considerate of others at increased risk for severe COVID-19 and those who are not yet able to be vaccinated. Wearing a mask in indoor public transportation settings will provide protection for the individual and the community,” CDC Director Dr. Rochelle Walensky said May 3.

These statements from CDC and its director leave no doubt that had Judge Mizelle not struck down the agency’s Mask Mandate last month, CDC would certainly have asked TSA to continue extending, perhaps forever, the Health Directives and Emergency Amendment enforcing mask-wearing. Therefore none of my causes of action are moot.

“There is no justification for that proposed course of action. It is clear that this matter is not moot. *See Federal Election Comm’n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 462 (2007); *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 189 (2000). And injunctive relief is still called for because the applicants remain under a constant threat ... *See, e.g., Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014).” *Roman Catholic Diocese of Brooklyn v. Cuomo*, No. 20A87 (U.S. Nov. 25, 2020).

I plan to file for summary judgment later this month against the Federal Defendants, first concerning the ITTR – which *Health Freedom Defense Fund* did not address and is still in effect as a result of the decision in *Wall* – and then the FTMM.

My claims against the Airline Defendants and STAT-MD all remain alive because they are based on past discrimination. The fact the FTMM has been vacated and the Airline Defendants have stopped forcing masks on their passengers does not change the harms they caused me with their illegal acts from Summer 2020 to April 2022, when they first totally banned the disabled from flying and then made it extremely difficult to obtain a medical exemption by requiring me to jump through numerous hoops prohibited by federal and state laws.

I will file oppositions to the Airline Defendants’ and STAT-MD’s Motions to Dismiss once the Court sets a deadline for me to do so.

Respectfully submitted this 6th day of May 2022.



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LOCAL CIV.R. 83.1(M) CERTIFICATION

I declare under penalty of perjury that no attorney has prepared or assisted in the preparation of this response.

Executed on May 6, 2022.



Kleanthis N. Andreadakis, plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May 6, I e-mailed this response to defense counsel:

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